

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

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In re:	:	
	:	Chapter 11
CIRCUIT CITY STORES, INC., <u>et al.</u>,	:	
	:	Case No. 08-35653 (KRH)
Debtors.	:	
	:	Jointly Administered
	:	
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**LIMITED OBJECTION OF GLIMCHER PROPERTIES LIMITED
PARTNERSHIP TO NOTICE OF REJECTION OF UNEXPIRED
LEASES AND ABANDONMENT OF PERSONAL PROPERTY**

Glimcher Properties Limited Partnership ("GPLP"), by its undersigned counsel, submits this Limited Objection to the Debtors' *Notice of Rejection of Unexpired Leases and Abandonment of Personal Property* (the "Rejection Notice") [DE #2434]. In support, GPLP respectfully states:

BACKGROUND

1. On November 10, 2008 (the "Petition Date"), the above-captioned Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Virginia (the "Court").

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Limited Partnership

2. Upon information and belief, the Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On February 19, 2009 the Court entered the *Order Under Bankruptcy Code Sections 105, 363 and 365 (I) Approving Bidding and Auction Procedures For Sale Of Unexpired Nonresidential Real Property Leases, (II) Setting Sale Hearing Dates, And (III) Authorizing And Approving (A) Sale Of Certain Unexpired Nonresidential Real Property Leases Free And Clear Of All Interests, (B) Assumption And Assignment Of Certain Unexpired Nonresidential Real Property Leases And (C) Lease Rejection Procedures* (the “Order”) [DE #2242].

4. On March 5, 2009, pursuant to the Order, the Debtors filed the Rejection Notice.

5. GPLP is the owner of, or the managing agent for the owners (the “Owners”) of two locations in which the Debtors lease retail space (the “Leased Premises”) from GPLP pursuant to written leases (collectively, the “GPLP Leases”). Specifically the Debtors lease retail space from GPLP at Weberstown Mall, Stockton, California, and Puente Hills Mall, City of Industry, California.

6. The Leased Premises are located in “shopping centers” as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).

7. By the Rejection Notice, the Debtors, among other things, seek to reject the GPLP Lease at Weberstown Mall (Store No. 241) (the “Rejected Lease”).

LIMITED OBJECTION

8. GPLP does not challenge the Debtors' exercise of business judgment for rejecting the Rejected Lease. However, for the following reasons, GPLP objects to certain aspects of the Rejection Notice.

9. First, by the Rejection Notice, the Debtors provide that rejection of the Rejected Lease shall become effective on March 12, 2009 or such later date as the Debtors surrender the Leased Premises by fulfilling the Rejection Requirements (as defined in the Order). GPLP submits that it should be clarified that rejection of the Rejected Lease should be effective the later of March 12, 2009 and the date the Debtors vacate the Leased Premises and surrender such Leased Premises to GPLP by fulfilling the Rejection Requirements. The Debtors should not be permitted to reject the Rejected Lease prior to vacating the Leased Premises.

10. Second, GPLP submits that any rejection of the Rejected Lease must comply with the Debtors' obligations under section 365 of the Bankruptcy Code.

11. Section 365(d)(3) of the Bankruptcy Code provides, in relevant part, that

The trustee shall timely perform all the obligations of the debtor ... arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.

11 U.S.C. § 365(d)(3).

12. The Debtors are obligated to pay all of their obligations under the Rejected Lease through the effective date of rejection, including the pro-rated rent for the month in which the Rejected Lease is rejected, regardless of whether the Debtors are in possession of the Leased Premises. *See* Memorandum Opinion entered February 12, 2009 (Docket No. 2107).

13. Accordingly, any order authorizing the Debtors to reject the Rejected Lease should require the Debtors to satisfy all of their obligations under the Rejected Lease that become due up to and including the date of rejection.

14. **WHEREFORE**, GPLP respectfully requests that the Court enter an order: (a) sustaining this Limited Objection; (b) requiring that the Debtors, pursuant to section 365(d)(3) of the Bankruptcy Code, continue to timely perform all payment obligations under the Rejected Lease when due; and (c) granting GPLP such other and further relief as this Court deems just and appropriate under the circumstances.

March 12, 2009

Respectfully submitted,

GLIMCHER PROPERTIES LIMITED
PARTNERSHIP

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 2009, I caused a copy of the foregoing to be served by electronic means on the “2002” and “Core” lists and through the ECF system.

/s/ Augustus C. Epps, Jr.
Augustus C. Epps, Jr.

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